THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 12129 of 2006

Oral order:

Aggrieved by the action of the respondents-BSNL in deducting an amount of Rs. 30,089/- from the gratuity payable to the petitioner, the petitioner filed the writ petition contending that the said action is illegal, arbitrary and violative of principles of natural justice and Articles 14, 16, and 21 of the Constitution of India, and consequently direct the respondents to pay the recovered amount with interest at the rate of 24% per annum.

The learned counsel for the petitioner submits that the petitioner retired from the service of the respondents as Chief Technical Supervisor on 28.02.2006. While in service, the petitioner was promoted from Grade-III to Grade-IV under the BCR scheme. Accordingly his pay was fixed in the said Grade w.e.f. 01.07.1999. He submits that the respondents informed the petitioner orally that his pay was fixed wrongly on the promotion post, however, without re-fixing his pay immediately, the respondents after retiring the petitioner from service, without giving opportunity to the petitioner, deducted an amount of Rs. 30,089/- from the gratuity payable to the petitioner, which is illegal and arbitrary. He submits that since the petitioner is no more in service, the respondents could not have recovered the excess amounts from the gratuity payable to him. Hence, he prays for appropriate directions to the respondents to refund the recovered amount with interest thereon.

The respondents-BSNL filed counter. The learned Standing Counsel for the respondents, reiterating the counter averments submits

that the petitioner while in service, upon completion of TTA training, was inducted into the restructured TTA cadre w.e.f. 02.04.1995. Thereafter, upon completion of 26 years of service, he was promoted and placed in the next higher scale of pay i.e. Rs.5000-150-8000 w.e.f. 01.07.1997. While so, the Department of Telecommunications, issued orders dated 20.04.1999 and 20.09.1999, revising the said pay scale to Rs.5500-175-9000 w.e.f. 01.12.1998, and as per the option exercised by the petitioner, his pay was fixed at Rs.6,500/- w.e.f. 01.07.1999 with DNI as 01.07.2000.

While the matters stood thus, the Department of Telecommunication issued another order dated 28.09.2000, giving the benefit of one additional increment to those who were drawing the scale of Rs.5500-175-9000, and in terms thereof, the petitioner's pay was fixed at Rs.6,725/- w.e.f. 01.07.1999 with DNI as 01.07.2000. While so, he submitted that the Department of Telecommunications issued orders dated 04.05.2001 disallowing the benefit of additional increment to those officials who were drawing pay scale in BSR pay scale of pre-restructured cadre i.e. Rs. 5000-8000 prior to 01.12.1998. As the petitioner had drawn the scale of Rs. 5000-8000 prior to 01.12.1998, the benefit of additional increment given to him was withdrawn and his pay was revised and re-fixed at Rs.6,550/- instead of Rs.6,725/- fixed earlier, and all the fixations done from 01.07.1999 to 01.07.2004, in the IDA scale on 01.10.2000 and Grade-IV scale on 01.07.2004 were revised. Accordingly, the petitioner was issued memos communicating the particulars of the revised pay fixation done w.e.f. 01.07.1999, 01.10.2000 and 01.07.2004. The revised pay fixation was forwarded to the Department of Telecommunication Cell for settlement of retirement benefits, and sanctioned amounts were paid after deducting the over payment of Rs.30,089/- made by the

Department to the petitioner (Overpayment of Rs.26,209/- + Excess payment of Earned Leave encashment of Rs.3,880/-). Hence, he submitted that there is nothing wrong in deducting the overpayments made to the petitioner, and prayed for dismissal of the writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-BSNL.

As is evident from the counter filed by the respondents, the petitioner was given additional increment which he was not entitled to. As the same was given to him erroneously, the respondents withdrew the said additional increment and re-fixed his pay. It is the case of the respondents that they having re-fixed the pay, also issued memos to the petitioner in the year 2001 itself informing him about the re-fixing of his pay, by withdrawing the additional increment, given to him erroneously. Admittedly, the petitioner did not question the said memos. The learned counsel for the petitioner fairly admitted that when an employee is paid excess amounts by erroneous fixation of pay, the same can be recovered from him by the employer by re-fixing his pay correctly. Such being the law, the petitioner cannot be allowed to contend that the respondents could not have recovered the excess amounts paid to him because he has already retired from service. In that view of the matter, no exception can be taken to the action of the respondents in recovering the excess amount of Rs.30,089/- paid to the petitioner by reason of erroneous fixation of his pay, from the gratuity payable to him.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Dated: **November, 2007.**
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